

**A Perkasa Temenggong Sdn Bhd v Pentadbir Tanah Hulu Langat
& Ors (Pengarah Tanah dan Galian Negeri Selangor, third
party)**

B HIGH COURT (SHAH ALAM) — SUIT NO BA-22NCVC-33-01 OF
2020
CHOO KAH SING J
6 AUGUST 2022

C *Contract — Void contract — Sale and purchase agreement — Plaintiff and
bank entered into auction sale agreement of a piece of land — Director of Land
and Mines Selangor stated that title of land was invalid — Plaintiff brought
D action against bank to obtain refund of purchase price — Whether auction and
auction sale agreement void — Whether bank entitled to purchase price
— Whether bank ought to refund purchase price to plaintiff — Whether bank's
third party action against Director of Land and Mines Selangor for refund of
E auction purchase price money ought to be allowed — Whether bank ought to file
separate action against Director of Land and Mines Selangor for accepting and
registering bank's charges on invalid land title — Contracts Act 1950 ss 21 & 66*

F The dispute in the present case was related to a piece of land which had two
distinct titles attached to it ie, Lot 541 and Lot 630. Lot 541 was registered in
the name of the sixth defendant, but the said title was used by an entity known
as Lekoufu Enterprise ('Lekoufu') as a security for a loan granted by Alliance
Bank Malaysia Bhd ('the bank'). When Lekoufu failed to pay the loan, the bank
proceeded to conduct public auction of Lot 541 which ended with the plaintiff
as the successful bidder. The plaintiff had also paid the sum of RM230,000 to
G the bank as a purchase price for Lot 541 ('the purchase price') pursuant to the
auction sale agreement executed between the plaintiff and the bank. There was
an issue related to the loan obtained by Lekoufu whereby the sixth defendant
stated that the said loan was fraudulently obtained but this issue was pursued
by the sixth defendant in a separate suit ('Suit 498'). On the other hand,
H Lot 630 was initially registered in the name of the fourth defendant who had
subsequently sold the same to the fifth defendant. The Director of Land and
Mines Selangor ('the second defendant') then informed the court in the present
case that the correct and valid title was Lot 630, and this had led to the filing of
the main suit by the plaintiff seeking an order from the court for the bank to
refund the purchase price to the plaintiff ('the plaintiff's claim'). The bank
I denied liability and then brought a third party action against the second
defendant. The bank submitted that it could rely on cl 23 of the Proclamation
of Sale and this statement: 'Prospective bidders are advised to conduct an
official search at the relevant Land Office and inspect all liabilities,

encumbrances and to identify the correct subject property prior to the auction sale' (the said statement'). The bank further argued that at all material times the second defendant represented to the bank that there was a valid title deed to the property. Hence, the second defendant should take full responsibility in the event the bank had to refund the purchase price to the plaintiff. The questions arose in the present case were: (a) what the status of the public auction was; and (b) whether the bank was entitled to the purchase price.

Held, allowing the plaintiff's claim with costs of RM5,000 to be paid by each of the first, second and third defendants to the plaintiff subject to allocator fees:

- (1) Both the plaintiff and the bank were not aware of the fact that Lot 541 was not valid when the auction sale agreement was entered into. There was no fault on either party in the auction sale agreement. In such situation, premised on s 21 of the Contracts Act 1950, the auction and the auction sale agreement ought to be declared as null and void ab initio. Consequently, pursuant to s 66 of the Contracts Act 1950, the bank was required or was bound to refund the purchase price to the plaintiff (see paras 20–21).
- (2) The court found that the bank could not rely on the said statement in the circumstances of the case because the subject matter forming the essential part of the agreement did not exist. The court likewise found the bank could not rely on cl 23 in the proclamation of sale for the same reason. The subject matter which formed the basis of the auction was the property under Lot 541 title and the auction sale agreement was premised on the right of the bank as chargee under Lot 541 title. By operation of the law the auction sale agreement was void. Therefore, cl 23 in the proclamation of sale had no relevance since the auction sale agreement was void (see para 22).
- (3) With regard to the expenses incurred by the plaintiff, the court found that the first and second defendants were jointly and/or severally liable to compensate the plaintiff for the expenses incurred, except for the miscellaneous costs. The expenses included the quit rent paid by the plaintiff for Lot 541 amounting to RM1,448, the costs to remove a caveat lodged on Lot 541 amounting to RM5,500, and the stamp duty for the attempt to transfer Lot 541 amounting to RM3,600. In view of the findings of the court in the main suit, the court had ordered for the plaintiff's losses to be compensated by the relevant parties. Hence, the plaintiff's claim had been properly disposed (see paras 25–27 & 34).
- (4) The bank's loss was not in respect of the refund of the auction purchase price money. The bank's loss was in relation to the loan that had been disbursed based on the charges over an invalid title deed which were intended as security for the disbursement of the loan to the borrower. Hence, the bank's third party action against the second defendant for the

- A refund of the auction purchase price money ought to fail. The court's finding and decision in the third party action did not preclude the bank from pursuing its claims against the second defendant based on any cause of action which was premised on the second defendant's accepting and registering the bank's charges on the invalid Lot 541 title. The parties, in fact, had agreed that any issue concerning the validity of the charge(s) ought to be determined in Suit 498, not in this court (see para 33).
- B

[Bahasa Malaysia summary]

- C Pertikaian dalam kes ini adalah berkaitan dengan sebidang tanah yang mempunyai dua hakmilik berbeza iaitu, Lot 541 dan Lot 630. Lot 541 telah didaftarkan atas nama defendan keenam, tetapi hakmilik tersebut digunakan oleh satu entiti yang dikenali sebagai Lekoufu Enterprise ('Lekoufu') sebagai jaminan untuk pinjaman yang diberikan oleh Alliance Bank Malaysia Bhd ('bank'). Apabila Lekoufu gagal membayar pinjaman, bank meneruskan lelongan awam Lot 541 yang berakhir dengan plaintif sebagai pembida yang berjaya. Plaintif juga telah membayar sejumlah RM230,000 kepada bank sebagai harga belian untuk Lot 541 ('harga belian') menurut perjanjian jualan lelong yang ditandatangani antara plaintif dan bank. Terdapat isu yang berkaitan dengan pinjaman yang diperoleh oleh Lekoufu di mana defendan keenam menyatakan bahawa pinjaman tersebut diperoleh secara fraud tetapi isu ini telah diteruskan oleh defendan keenam dalam saman yang berasingan ('Saman 498'). Sebaliknya, Lot 630 pada mulanya didaftarkan atas nama defendan keempat yang kemudiannya telah menjualnya kepada defendan kelima. Pengarah Tanah dan Galian Selangor ('defendan kedua') kemudiannya memaklumkan kepada mahkamah dalam kes ini bahawa hakmilik yang betul dan sah ialah Lot 630, dan ini telah membawa kepada pemfailan saman utama oleh plaintif bagi memohon perintah daripada mahkamah untuk bank memulangkan harga belian kepada plaintif ('tuntutan plaintif'). Bank telah menafikan liabiliti dan kemudian membawa tindakan pihak ketiga terhadap defendan kedua. Bank berhujah bahawa ia boleh bergantung pada klausa 23 proklamasi jualan dan kenyataan ini: 'Prospective bidders are advised to conduct an official search at the relevant Land Office and inspect all liabilities, encumbrances and to identify the correct subject property prior to the auction sale' ('kenyataan tersebut'). Bank selanjutnya berhujah bahawa pada setiap masa yang material defendan kedua memberikan representasi kepada bank bahawa terdapat surat ikatan hak milik yang sah bagi hartanah tersebut. Oleh itu, defendan kedua harus bertanggungjawab sepenuhnya sekiranya bank terpaksa memulangkan harga belian kepada plaintif. Persoalan-persoalan yang timbul dalam kes ini ialah: (a) apakah status lelongan awam tersebut; dan
- I (b) sama ada bank berhak mendapat harga belian.

Diputuskan, membenarkan tuntutan plaintif dengan kos sebanyak RM5,000 dibayar oleh setiap defendan pertama, defendan kedua dan defendan ketiga kepada plaintif tertakluk kepada bayaran alokatur:

- (1) Kedua-dua plaintif dan bank tidak menyedari hakikat bahawa Lot 541 tidak sah apabila perjanjian jualan lelong tersebut dimeterai. Tiada kesalahan pada mana-mana pihak dalam perjanjian jualan lelong tersebut. Dalam keadaan sedemikian, berdasarkan s 21 Akta Kontrak 1950, lelongan dan perjanjian jualan lelong tersebut hendaklah diisytiharkan sebagai batal dan tidak sah dari awal lagi. Akibatnya, menurut s 66 Akta Kontrak 1950, bank dikehendaki atau terikat untuk membayar balik harga belian kepada plaintif (lihat perenggan 20–21).

A
B
- (2) Mahkamah mendapati bahawa bank tidak boleh bergantung kepada kenyataan tersebut dalam keadaan kes ini kerana perkara yang membentuk bahagian penting perjanjian tersebut tidak wujud. Mahkamah juga mendapati bank tidak boleh bergantung pada klausa 23 dalam proklamasi jualan atas sebab yang sama. Perkara yang menjadi asas lelongan adalah hartanah di bawah hakmilik Lot 541 dan perjanjian jualan lelongan tersebut adalah didasari atas hak bank sebagai pemegang gadaian di bawah hakmilik Lot 541. Dengan kuat kuasa undang-undang, perjanjian jualan lelong tersebut telah terbatal. Oleh itu, klausa 23 dalam proklamasi jualan tersebut menjadi tidak relevan kerana perjanjian jualan lelong tersebut telah terbatal (lihat perenggan 22).

C
D
- (3) Berkenaan dengan perbelanjaan yang ditanggung oleh plaintif, mahkamah mendapati defendan pertama dan kedua bertanggungjawab secara bersesama dan/atau berasingan untuk membayar pampasan kepada plaintif bagi perbelanjaan yang ditanggung, kecuali kos pelbagai. Perbelanjaan tersebut termasuklah cukai tanah yang dibayar oleh plaintif untuk Lot 541 berjumlah RM1,448, kos untuk membatalkan kaveat yang dimasukkan bagi Lot 541 berjumlah RM5,500, dan duti setem untuk percubaan memindahkan Lot 541 berjumlah RM3,600. Mengambil kira dapatan-dapatan mahkamah dalam saman utama, mahkamah telah memerintahkan agar kerugian plaintif dibayar pampasan oleh pihak-pihak yang berkenaan. Oleh itu, tuntutan plaintif telah dilupuskan dengan betul (lihat perenggan 25–27 & 34).

E
F
G
- (4) Kerugian bank tidak berkaitan dengan pemulangan wang harga belian lelongan tersebut. Kerugian bank adalah berkaitan dengan pinjaman yang telah dikeluarkan berdasarkan cagaran ke atas surat ikatan hak milik yang tidak sah yang bertujuan sebagai jaminan untuk pemberian pinjaman kepada peminjam. Oleh itu, tindakan pihak ketiga oleh bank terhadap defendan kedua untuk pemulangan wang harga belian lelongan sepatutnya gagal. Dapatan dan keputusan mahkamah dalam tindakan pihak ketiga tidak menghalang bank daripada meneruskan tuntutannya terhadap defendan kedua berdasarkan apa-apa kausa tindakan yang berasaskan kepada defendan kedua menerima dan mendaftarkan cagaran bank ke atas hakmilik Lot 541 yang tidak sah. Pihak-pihak, sebenarnya, telah bersetuju bahawa apa-apa isu mengenai keabsahan cagaran

H
I

A hendaklah ditentukan dalam Saman 498, bukan dalam mahkamah ini
(lihat perenggan 33).]

Legislation referred to

B Contracts Act 1950 ss 21, 66
National Land Code
Rules of Court 2012 O 14A

C *Rehvaathi Krishsamy (The Soon Kee & Partners) for the plaintiff.*
Nor Fariza Ridzuan (Selangor State Legal Advisor's Office) for the first and second
defendants; and in the third party action.
Cheah Fann Jin (Shook Lin & Bok) for the third defendant.

Choo Kah Sing J:

D INTRODUCTION

E [1] The plaintiff's claim is premised on the fact that it had successfully bid
for a property in a public auction, but it turned out that the title deed to the
property was not valid. The plaintiff, therefore, seeks, inter alia, for an order
from the court to order the third defendant, Alliance Bank Malaysia Bhd ('the
bank'), as the chargee bank (or the plaintiff in the auction proceeding
Execution No 38-31–403 of 2015) to refund the purchase price to the plaintiff.

F [2] The bank denies it is liable for the plaintiff's claim. The bank has brought
a third party action against the Director of Land and Mines of Selangor (the
second defendant in the main suit). The bank avers that at all material times the
Director of Land and Mines of Selangor represented to the bank that there was
a valid title deed to the property. Hence, the Director of Land and Mines
G Selangor should take full responsibility in the event the bank has to refund the
purchase price to the plaintiff.

H [3] The above is an abstract which summarises the crux of the main parties'
disputes before this court.

THE BACKGROUND FACTS

I [4] The plaintiff had successfully bid for a property ('the impugned
property') in a public auction with the title deed particulars HS(D) 42128,
Lot 541, Section 8, Pekan Semenyih, Daerah Ulu Langat, Negeri Selangor as
stated on the issue document of title ('Lot 541 Title').

[5] A first charge was registered in favour of the bank on the Lot 541 Title
sometime in March 1999. Sometime in November 2001, a second charge was

registered in favour of the bank on the Lot 541 Title. The charges were third party charges to secure a loan granted to one Lekoufu Enterprise as the borrower. The owner of the impugned property that was stated on the Lot 541 Title was one Kamalam a/p K Murugasa (the sixth defendant).

A

[6] The borrower defaulted on the loan repayments. As such, the bank took out an originating summons via Suit No 24FC-1274-09 of 2014 to enforce its right under the National Land Code to recover the defaulted loan sum, and on 16 December 2014, the bank obtained an order for sale of the impugned property (or the charged property in the Lot 541 Title) by way of public auction from the High Court of Shah Alam, Selangor.

B

C

[7] On 1 July 2015, a public auction was held to auction the impugned property identified by the title particulars in the Lot 541 Title. The plaintiff was the successful bidder. The plaintiff paid the successful auction price in full for the impugned property. When the plaintiff attempted to register the transfer of ownership at the land office, the plaintiff discovered that there was a private caveat lodged by the sixth defendant's son. On 12 November 2018, the plaintiff successfully obtained a court order via Originating Summons No BA-24NCVC-647-06 of 2018 to remove the said private caveat.

D

E

[8] The plaintiff had to submit a copy of the quit rent receipt as one of the documents to be submitted to the land office for the registration of the transfer of the impugned property to the plaintiff. When the plaintiff attempted to obtain the quit rent receipt from Majlis Perbandaran Kajang, the plaintiff was told that the quit rent receipt had already been issued to one Lee Pay Shin, the fourth defendant. The plaintiff was baffled and could not obtain any clarification or explanation from the authorities, including the land office, as to why the quit rent receipt was issued to Lee Pay Shin.

F

G

[9] The plaintiff then carried out a land search at the land office in relation to the impugned property and discovered that there exists another title particulars HS(D) 4261, Lot No 630, Pekan Semenyih, Daerah Ulu Langat, Negeri Selangor ('Lot 630 Title'). The Lot 630 Title refers to the same impugned property.

H

[10] The plaintiff could not register the transfer of ownership of the impugned property to itself under the Lot 541 Title. The plaintiff then filed this action to compel the first and second defendants to investigate why the impugned property has two different title deeds and which deed title is the actual title deed to the impugned property.

I

[11] In the course of the pre-trial case management of this court action, the counsel for the first and second defendants, after having investigated the matter

- A internally, informed the court that the correct or valid issue document of title in relation to the impugned property is the Lot 630 Title, and not the Lot 541 Title.
- B [12] The Lot 630 Title identifies the registered proprietor as Chang Nyet Ching who is the fifth defendant in the main action. The fifth defendant avers that she bought the impugned property under the Lot 630 Title from the fourth defendant. The fourth defendant confirms she sold the impugned property under the Lot 630 Title to the fifth defendant.
- C [13] After having obtained the confirmation from the first and second defendants that the correct and valid title to the impugned property is Lot 630 Title, the plaintiff decided to withdraw its claim against the fourth and fifth defendant in the main action. At the same time, fifth defendant also withdrew
- D her third party action against the Director of Land and Mines Selangor (second defendant in the main suit) and the fourth defendant (in the main suit). All the parties agreed that the fifth defendant is the lawful registered proprietor of the impugned property under Lot 630 Title. The parties accepted as fact that the Lot 630 Title is the correct and valid title and the Lot 541 Title is an invalid title
- E following the first and second defendants' confirmation to the court.
- F [14] With regard to sixth defendant, the sixth defendant has earlier applied to be added as the sixth defendant in the plaintiff's action. The sixth defendant asserts her interest as the named registered owner on Lot 541 Title has been affected. According to the sixth defendant's narrative, in late 2018, she filed a civil suit in the High Court of Shah Alam via Suit No BA-22NCVC-498-10 of 2018 ('Suit 498').
- G [15] In the Suit 498, the sixth defendant (as the plaintiff in the Suit 498) sued Lekoufu Enterprise (the borrower) and its proprietors (Wong Wai Hong, Ng Say Hoo and Lim Seng Guan) and the bank. In gist, the sixth defendant avers she and her husband were cheated by Lekoufu Enterprise and its proprietors in that they fraudulently obtained a bank loan from the bank which
- H resulted in charges over the impugned property. The sixth defendant denies she has executed any charge document to facilitate Lekoufu Enterprise to obtain the loan from the bank. The sixth defendant also avers she did not receive any notice pertaining to the auction of the impugned property. She only found out about the auction when she discovered that the private caveat that was lodged
- I by her son was removed. Hence, she took out the Suit 498 against Lekoufu Enterprise and its proprietors and the bank for her losses.
- [16] While the Suit 498 was still pending in the High Court, the plaintiff here took out this action in January 2020. As such, the sixth defendant wanted

to add as a party in this action to assert her right and interest in the impugned property under Lot 541 Title.

A

[17] After the parties had agreed to the facts that the Lot 630 Title is the valid title and that the Lot 541 Title was invalid, the parties consented to the main suit and the bank's third party action to be disposed by way of O 14A of the Rules of Court 2012. The questions of law will be mentioned in the relevant part of the judgment below.

B

THE FINDINGS OF THIS COURT

C

[18] At the time of the filing of the suit, the plaintiff did not know which of the two title deeds is the correct or valid title deed. Hence, the plaintiff's claim was not mounted on a void contract. Instead, the claim was mounted on the causes of action of negligence and/or breach of contract. Based on the agreed fact that the Lot Title 541 is an invalid title, the parties consented to the framing of the questions of law for decision by this court by way of O 14A of the Rules of Court 2012.

D

[19] Insofar as the plaintiff's claim is concerned, it had purchased a property identified by the particulars in the Lot 541 Title that was not a valid title. It was not possible to register any transfer of ownership of a property under the Lot 541 Title under the legal framework of the National Land Code.

E

[20] Neither the plaintiff nor the bank was aware of the fact that the Lot 541 Title was not valid when the auction sale agreement was entered into. The plaintiff and the bank mistakenly believed they had concluded the sale and purchase of a property under a valid Lot 541 Title. They also mistakenly believed the bank had the lawful right as chargee under the the parties were under a common mistake, a genuine mistake, as to a matter of fact essential to the agreement. There was no fault on either party in the auction sale agreement. In such situation, under the law of contract, s 21 of the Contracts Act 1950 states: 'Where both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void'. Hence, the auction and the auction sale agreement ought to be declared as null and void ab initio.

F

G

H

[21] Based on the above finding, it follows that 'when an agreement is discovered to be void, or a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it' — s 66 of the Contracts Act 1950. Hence, the bank is under legal obligation to return the money that the plaintiff had paid. The plaintiff paid a sum of RM230,000 to the bank, and the bank has received the consideration sum or has received the advantage under the auction sale agreement. Therefore, the bank is required or

I

A is bound to refund the money to the plaintiff.

[22] The bank's counsel submitted that the bank could rely on this: 'Prospective bidders are advised to conduct an official search at the relevant Land Office and inspect all liabilities, encumbrances and to identify the correct subject property prior to the auction sale'. The court finds that the bank could not rely on this statement in the circumstances of this case because the subject matter forming the essential part of the agreement does not exist. The court likewise finds the bank could not rely on cl 23 in the proclamation of sale for the same reason. The subject matter which forms the basis of the auction was the property under Lot 541 Title and the auction sale contract was premised on the right of the bank as chargee under Lot 541 Title. By operation of the law the auction agreement is void. Therefore, cl 23 in the proclamation of sale has no relevance since the auction sale agreement is void.

D [23] Based on the above findings, this court answers the questions of law (which have been paraphrased) in encl 112 (the main suit) as below:

Question 1: What is the status of the public auction?

E Answer: The status of the public auction is declared null and void.

Question 2: Is the Bank entitled to the purchase price?

Answer: No.

F [24] Insofar as the questions of law for questions 3, 4 and 5 are concerned, they are related to the first and second defendants. This court is of the considered view that it is not necessary for the court to answer those questions 3, 4 and 5 because the first and second defendants have admitted responsibility and have informed the court that the first and second defendants are ready to offer to the registered owner, ie, the sixth defendant, another property of the same value as the purchase price in the auction (see para 6 of the first and second defendants' counsel's submission — ie encl 119).

H [25] With regard to the expenses incurred by the plaintiff, this court finds that the first and second defendants are responsible to compensate the plaintiff for the expenses incurred, except for the miscellaneous costs. In relation to the sum of RM1,448 paid by the plaintiff for quit rent for the impugned property under the invalid Lot 541 Title, this court finds that the first and second defendants should compensate this sum to the plaintiff because the first and second defendants had accepted the payment despite the Lot 541 Title being invalid.

I [26] In relation to the costs of RM5,500 incurred by the plaintiff to remove a caveat lodged on the Lot 541 Title, this court finds that the first and second

defendants should compensate the plaintiff because they had allowed a caveat to be lodged despite the Lot 541 Title being invalid. In relation to the stamp duty of RM3,600 paid by the plaintiff for the attempted transfer of the impugned property under the Lot 541 Title, the expense was wasted as the transfer was rejected by the first and second defendants, so the first and second defendants should compensate the plaintiff for this cost as well.

A

B

[27] In view of the findings of this court in the main suit, the court has ordered for the plaintiff's losses to be compensated by the relevant parties. Hence, the plaintiff's claim has been properly disposed.

C

The bank's third party action — Against the second defendant (in the main suit)

[28] The bank is seeking an indemnity from the second defendant (in the main suit) in its third party action for any sum it is liable to pay the plaintiff. This court is of the considered view that the bank's third party action against the second defendant ought to fail following the court's findings for the main action. The reasons are set out as below.

D

[29] In the main action, the plaintiff sought for a refund for the purchase price it had paid for the purchase of the impugned property with an invalid title deed. The money was paid to the bank, and the bank could not transfer and deliver the subject matter of the sale. Following the court's finding that the auction sale contract was void, the bank has to compensate the plaintiff for the benefit or advantage it has received by operation of the law.

E

F

[30] This court finds that the bank is not entitled to claim the purchase price from the first and second defendants in the third party action because the loss suffered by the bank is not the purchase price refunded to the plaintiff. The loss suffered by the bank is in relation to the loan it had made to the borrower on the premise of its charges on the Lot 541 Title that was invalidly issued by the first and second defendants.

G

[31] The bank's entire problem sprung from the time the second defendant registered the charges on the Lot 541 Title as security for the loan to be made by the bank to the borrower. If there is any loss on the bank's part, it ought to begin from the point the second defendant accepted an invalid title deed to register the bank as the chargee. Hence, the actual loss of the bank is not the refund of the plaintiff's money, rather the bank's loss is the money it had disbursed to the borrower because the second defendant accepted the invalid Lot 541 Title to register the bank as chargee of the impugned property which the bank accepted as security for the loan. Hence, the third party action filed by the bank against the second defendant for the compensation for the refund auction purchase price money is unsustainable. The bank actual loss is not the

H

I

A refund of the auction purchase price money, but the loss in respect of the loan it had disbursed based on the charges on an invalid title deed.

B [32] The bank should sue the second defendant in a separate action to recover its losses arising from the second defendant's accepting of the charges over the invalid Lot 541 Title. At the time the decision of this court was delivered on 8 December 2021, Suit 498 was still pending. The bank was advised by this court to consider pursuing any claims it may have against, inter alia, the sixth defendant, the borrower and the Director of Land and Mines of Selangor for its losses in relation to the loan in the Suit 498.

C [33] As for the question whether the second defendant should be responsible to the bank for the refund of the auction purchase price money to the plaintiff, this court answers this question in the negative. As explained above, the bank's loss is not in respect of the refund of the auction purchase price money. The bank loss is in relation to the loan that has been disbursed based on the charges over an invalid title deed which were intended as security for the disbursement of the loan to the borrower. Hence, the bank's third party action against the second defendant for the refund of the auction purchase price money ought to fail. The court's finding and decision in the third party action does not preclude the bank from pursuing its claims against the second defendant based on any cause of action which is premised on the second defendant's accepting and registering the bank's charges on the invalid Lot 541 Title. The parties, in fact, have agreed that any issue concerning the validity of the charge(s) ought to be determined in Suit 498, not in this court.

CONCLUSION

G [34] For the above reasons, in the main action, this court allows the plaintiff's claim and orders: (i) the bank to return the sum of RM230,000 to the plaintiff; and (ii) the first and second defendants to be jointly and/or severally liable to compensate the plaintiff for the sums of RM3,600, RM1,448 and RM5,500.

H [35] This court also orders the first, second and third defendants to pay costs of RM5,000 (subject to allocator fees) each to the plaintiff.

I [36] As for the bank's third party action against the second defendant, this court dismisses the third party action, and this court also orders the bank to pay costs of RM5,000 (subject to allocator fees) to the second defendant. Lastly, this court declares that the Lot 541 Title as invalid.

Plaintiff's claim allowed with costs of RM5,000 to be paid by each of first, second and third defendants to plaintiff subject to allocator fees.

Reported by Dzulqarnain Ab Fatar

A

B

C

D

E

F

G

H

I